

SENATE BILL NO. 12

INTRODUCED BY J. BOHLINGER

A BILL FOR AN ACT ENTITLED: "AN ACT REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY INCREASING THE LODGING FACILITY USE TAX, BY INCREASING THE CIGARETTE TAX, AND BY ESTABLISHING A RENTAL VEHICLE SURCHARGE; DEFINING THE TAXPAYER AS THE USER OF THE FACILITY; PROVIDING THAT SUBSTANTIALLY ALL OF THE INCREASES OF NET COLLECTIONS OF THE LODGING FACILITY USE TAX AND THE CIGARETTE TAX AND ALL OF THE RENTAL VEHICLE SURCHARGE ARE TO BE DEPOSITED IN THE STATE GENERAL FUND; PROVIDING FOR THE ADMINISTRATION OF THE RENTAL VEHICLE SURCHARGE, INCLUDING PENALTIES; AMENDING SECTIONS 15-65-101, 15-65-111, 15-65-121, 16-11-111, AND 16-11-119, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-65-101, MCA, is amended to read:

"15-65-101. Definitions. For purposes of this part, the following definitions apply:

(1) "Accommodation charge" means the fee charged by the owner or operator of a facility for use of the facility for lodging, including bath house facilities, but excluding charges for meals, transportation, entertainment, or any other similar charges.

(2) (a) "Campground" means a place, publicly or privately owned, used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(3) "Consumer" means the user of a facility. For the purposes of 15-65-111, the consumer is the taxpayer.

~~(3)~~(4) "Council" means the tourism advisory council established in 2-15-1816.

~~(4)~~(5) (a) "Facility" means a building containing individual sleeping rooms or suites, providing overnight lodging facilities for periods of less than 30 days to the general public for compensation. The term includes a

1 facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch,
2 guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

3 (b) The term does not include any health care facility, as defined in 50-5-101, any facility owned by a
4 corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under ~~the age of~~ 18 years
5 of age for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose
6 average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized
7 under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is
8 rented solely on a monthly basis or for a period of 30 days or more.

9 ~~(5)(6)~~ "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under
10 Montana law and recognized by a majority of the governing body in the city, consolidated city-county, resort area,
11 or resort area district in which the bureau is located.

12 ~~(6)(7)~~ "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana
13 law and recognized by the council as the entity for promoting tourism within one of several regions established
14 by executive order of the governor.

15 ~~(7)(8)~~ "Resort area" means an area established pursuant to 7-6-1508.

16 ~~(8)(9)~~ "Resort area district" has the meaning provided in 7-6-1531."
17

18 **Section 2.** Section 15-65-111, MCA, is amended to read:

19 **"15-65-111. Tax rate.** (1) There is imposed on the ~~user of~~ consumer who uses a facility a tax at a rate
20 equal to ~~4%~~ 9% of the accommodation charge collected by the facility.

21 (2) Accommodation charges do not include charges for rooms used for purposes other than lodging."
22

23 **Section 3.** Section 15-65-121, MCA, is amended to read:

24 **"15-65-121. (Temporary) Distribution of tax proceeds.** (1) The proceeds of the tax imposed by
25 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special
26 revenue fund to the credit of the department. The department may spend from that account in accordance with
27 an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing
28 the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of
29 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine
30 the expenditures by state agencies for in-state lodging for each reporting period and deduct ~~4%~~ 9% of that

1 amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the
2 fund or funds from which in-state lodging expenditures were paid by state agencies. Fifty-five percent of the
3 balance of the remaining tax proceeds must be deposited in the state general fund. ~~The~~ Then of the balance
4 remaining, the amount of \$400,000 each year must be deposited in the Montana heritage preservation and
5 development account provided for in 22-3-1004. The balance of the tax proceeds received each reporting period
6 and not deducted pursuant to the expenditure appropriation, deposited in the fund or funds from which in-state
7 lodging expenditures were paid by state agencies, deposited in the state general fund, or deposited in the
8 heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must
9 be transferred to an account in the state special revenue fund to the credit of the department of commerce for
10 tourism promotion and promotion of the state as a location for the production of motion pictures and television
11 commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife,
12 and parks, as follows:

13 (a) 1% to the Montana historical society to be used for the installation or maintenance of roadside
14 historical signs and historic sites;

15 (b) 2.5% to the university system for the establishment and maintenance of a Montana travel research
16 program;

17 (c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that
18 have both resident and nonresident use;

19 (d) 67.5% to be used directly by the department of commerce; and

20 (e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional
21 nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds
22 collected statewide; and

23 (ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort
24 area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional
25 nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area
26 district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated
27 city-county, resort area, or resort area district.

28 (2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for
29 funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an
30 annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit

1 tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district
2 is located.

3 (3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing
4 plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation
5 may be used by the department of commerce for tourism promotion and promotion of the state as a location for
6 the production of motion pictures and television commercials. (Terminates July 1, 2007--sec. 3, Ch. 469, L.
7 2001.)

8 **15-65-121. (Effective July 1, 2007) Distribution of tax proceeds.** (1) The proceeds of the tax imposed
9 by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state
10 special revenue fund to the credit of the department. The department may spend from that account in
11 accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting
12 and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the
13 provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall
14 determine the expenditures by state agencies for in-state lodging for each reporting period and deduct ~~4%~~ 9%
15 of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited
16 in the fund or funds from which in-state lodging expenditures were paid by state agencies. Fifty-five percent of
17 the balance of the remaining tax proceeds must be deposited in the state general fund. The remaining balance
18 of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation,
19 ~~or~~ deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or
20 deposited in the state general fund is statutorily appropriated, as provided in 17-7-502, and must be transferred
21 to an account in the state special revenue fund to the credit of the department of commerce for tourism
22 promotion and promotion of the state as a location for the production of motion pictures and television
23 commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife,
24 and parks, as follows:

25 (a) 1% to the Montana historical society to be used for the installation or maintenance of roadside
26 historical signs and historic sites;

27 (b) 2.5% to the university system for the establishment and maintenance of a Montana travel research
28 program;

29 (c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that
30 have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials."

Section 4. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax -- exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~48~~ 60 cents on each package containing 20 cigarettes, ~~and, when~~ Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to

1 a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or
2 credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe
3 or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the
4 shipment date forfeits the refund or credit.

5 (5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of
6 preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval
7 prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the
8 quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in
9 this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and
10 delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a
11 federally recognized tribe or tribes of that reservation, must be given a ~~credit or refund~~ or credit. Once the quota
12 has been filled, the department shall immediately notify all affected wholesalers that further sales on that
13 reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the
14 quota period. Quota allocations are not transferable between quota periods or between reservations.

15 (6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the
16 refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on
17 the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation
18 at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs
19 or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."

20
21 **Section 5.** Section 16-11-119, MCA, is amended to read:

22 **"16-11-119. Disposition of taxes.** Cigarette taxes collected under the provisions of 16-11-111 must
23 be allocated as follows:

24 (1) The amount of ~~44.44%~~ 3.333% of the cigarette tax collected on each package of cigarettes must
25 be deposited in the state special revenue fund to the credit of the department of public health and human
26 services for the operation and maintenance of state veterans' nursing homes.

27 (2) The amount of ~~73.04%~~ 91.912% must, in accordance with the provisions of 15-1-501, be deposited
28 in the state general fund.

29 (3) The amount of ~~45.85%~~ 4.755% must, in accordance with the provisions of 15-1-501, be deposited
30 in the long-range building program account provided for in 17-7-205."

1

2 **NEW SECTION. Section 6. Rental vehicle surcharge -- definitions.** As used in [sections 6 through
3 11], the following definitions apply:

4 (1) (a) "Gross receipts" means all receipts from sources within the state, whether in money or other
5 consideration, received from engaging in the business of renting rental vehicles.

6 (b) The term does not include the amount received for motor fuel.

7 (2) (a) "Rental vehicle" means a passenger vehicle that:

8 (i) is rented for a period of not more than 30 days;

9 (ii) is rented without a driver;

10 (iii) is designed to transport 15 or fewer passengers; and

11 (iv) has a manufacturer's rated capacity of 1 ton or less.

12 (b) The term does not include:

13 (i) a vehicle rented pursuant to an insurance contract; or

14 (ii) a vehicle provided to a customer to use while the customer's vehicle is being repaired or maintained.

15 (3) "Rental vehicle owner or operator" means a person who owns or leases rental vehicles and who
16 rents or offers to rent the rental vehicles.

17

18 **NEW SECTION. Section 7. Rate of rental vehicle surcharge -- collection and reporting --**
19 **distribution.** (1) There is imposed a surcharge on rental vehicles. The surcharge is 9% of the rental base price,
20 exclusive of insurance, as stated in the rental contract. The surcharge must be stated in the rental contract and
21 collected in accordance with the terms of the contract.

22 (2) The rental vehicle owner or operator shall report to the department, at the end of each calendar
23 quarter, the gross receipts actually collected during that quarter attributable to the rental contracts, exclusive of
24 gross receipts attributable to contracts for insurance. The report must be on a form provided by the department.
25 The report is due on or before the last day of the month following the end of the calendar quarter and must be
26 accompanied by a payment in an amount equal to the surcharge required to be collected under subsection (1).

27 (3) The department shall deposit the proceeds in the state general fund.

28

29 **NEW SECTION. Section 8. Permit application -- penalty.** (1) Prior to engaging in the business of
30 renting vehicles, a prospective rental vehicle owner or operator shall file with the department an application for

1 a permit. If the prospective rental vehicle owner or operator has more than one location in which the owner or
2 operator maintains an office or other place of business, an application may include multiple locations.

3 (2) Each rental vehicle owner or operator who is required to file a report under [sections 6 through 11]
4 is required to file an application for a permit.

5 (3) Each application for a permit must be on a form prescribed by the department and must set forth
6 the name under which the applicant intends to transact business, the location of the applicant's place or places
7 of business, and other information that the department may require. The application must be filed by the rental
8 vehicle owner or operator if the owner or operator is a natural person, by a member or partner if the owner or
9 operator is an association or partnership, or by a person authorized to sign the application if the owner or
10 operator is a corporation.

11 (4) A rental vehicle owner or operator who purposely or knowingly fails to comply with this section is
12 guilty of a misdemeanor and is subject to a fine of not less than \$50 or more than \$500, imprisonment in the
13 county jail not to exceed 1 year, or both.

14
15 **NEW SECTION. Section 9. Audits -- records.** (1) The department may audit the books and records
16 of a rental vehicle owner or operator to ensure that the proper amount of the surcharge imposed by [section 6]
17 has been collected. An audit may be done on the premises of the rental vehicle owner or operator or at any other
18 convenient location.

19 (2) The department may request that the rental vehicle owner or operator provide the department with
20 books, ledgers, registers, or other documents necessary to verify the correct amount of the surcharge.

21 (3) The rental vehicle owner or operator shall maintain and have available for inspection by the
22 department books, ledgers, registers, or other documents showing the collection of the rental vehicle surcharge
23 for the preceding 5 years.

24 (4) Except in the case of a person who, with intent to evade the surcharge, purposely or knowingly files
25 a false or fraudulent report violating the provisions of [sections 6 through 11], the amount of surcharge due under
26 any report must be determined by the department within 5 years after the return is made. After 5 years, the
27 department is barred from revising any report or recomputing the surcharge due, and a proceeding in court for
28 the collection of the surcharge may not be instituted unless notice of any additional surcharge is provided within
29 the 5-year period.

30 (5) An application for revision may be filed with the department by a rental vehicle owner or operator

1 within 5 years from the original due date of the report.

2

3 **NEW SECTION. Section 10. Penalty for failure to file or pay.** (1) A rental vehicle owner or operator
4 who fails to file the report as required by [section 7] must be assessed a penalty as provided in 15-1-216. The
5 department may waive the penalty as provided in 15-1-206.

6 (2) A rental vehicle owner or operator who fails to make payment or fails to report and make payment
7 as required by [section 7] must be assessed a penalty and interest as provided in 15-1-216. The department may
8 waive any penalty pursuant to 15-1-206.

9 (3) (a) If a rental vehicle owner or operator fails to file the report required by [section 7] or if the
10 department determines that the report understates the amount of surcharge due, the department may determine
11 the amount of the surcharge due and assess that amount against the owner or operator. The provisions of
12 15-1-211 apply to any assessment by the department. The rental vehicle owner or operator may seek review
13 of the assessment pursuant to 15-1-211.

14 (b) Whenever a deficiency is determined and the surcharge becomes final, the department shall mail
15 a notice and demand for payment to the rental vehicle owner or operator. The surcharge is due and payable at
16 the expiration of 30 days after the notice and demand were mailed. Interest on any deficiency assessment must
17 be computed as provided in 15-1-216.

18

19 **NEW SECTION. Section 11. Overpayment.** (1) If the department determines that the amount of
20 surcharge, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment
21 must be credited against any surcharge, penalty, or interest then due from the rental vehicle owner or operator
22 and the balance must be refunded to the owner or operator, to the owner's or operator's successor through
23 reorganization, merger, or consolidation, or to the owner's or operator's shareholders upon dissolution.

24 (2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate that is
25 charged on unpaid taxes as provided in 15-1-216 from the due date of the return or from the date of
26 overpayment, whichever is later, to the date that the department approves refunding or crediting of the
27 overpayment.

28 (3) (a) Interest does not accrue during a period in which the processing of a claim for refund is delayed
29 more than 30 days by reason of failure of the rental vehicle owner or operator to furnish information requested
30 by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual surcharge liability or one reasonably assumed to be imposed by [sections 6 through 11] is considered an overpayment with respect to which interest is allowable.

NEW SECTION. Section 12. Codification instruction. [Sections 6 through 11] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 6 through 11].

NEW SECTION. Section 13. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. Section 14. Effective date. [This act] is effective October 1, 2002.

NEW SECTION. Section 15. Applicability. [This act] applies to cigarettes in the possession of wholesalers on October 1, 2002.

- END -